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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER DOOLEY, JAMES C	
			ART UNIT 3634	PAPER NUMBER

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/642,221

Applicant(s)

CHOCHINOV ET AL.

Examiner

James C. Dooley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/13/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claim 5 objected to because of the following informalities:

Claim 5 is self-dependent. For the purpose of examination it will be treated as if claim 5 is dependent from claim 4.

2. Claim 15 objected to because of the following informalities:

Towels listed twice, and improper use of a semicolon between towels and dust pans

3. Claim 23 is objected to because of the following informalities:

"inserting at least one janitorial implement (into) said receptacle."

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. Claim 30 recites the limitation "the guide recess". There is insufficient antecedent basis for this limitation in the claim. It appears that claim 30 was intended to depend from claim 29, similar to claim 21 being dependent from claim 20.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3,6,8-10,12-15,22 rejected under 35 U.S.C. 102(b) as being anticipated by Murphy (US patent number 5,881,891). Murphy teaches a cleaning organizer for use with a convention institutional waste container featuring:

- a. A base (12) having a top surface (16)
- b. An open inner portion extending along the entire circumference of the Container (col. 2 ln. 39-40)
- c. An inner lip (17)
- d. A latch (seen as lip 17)
- e. A cylindrical waste container (col. 2 ln. 17)
- f. Holders integrally formed in the base (20,68,63)
- g. Holders attached to outers side (43)
- h. A hook (69)
- i. A detachable holder (col. 4 ln. 8-9)
- j. Configurations for receiving janitorial implements (col. 2 ln. 50-51).
 - i. Towel holder (35)
 - ii. Liner dispenser (58)

- iii. Bottle carrier (47)
- k. Towels (R)
- l. Rigid plastic construction (col. 2 ln. 22)

Although, Murphy does not teach holders of unitary construction with the base the PTO has on several previous occasions interpreted the term "integral" to include more than a unitary construction. See e.g. *In re Kohno* , 391 F.2d 959, 157 USPQ 275 (CCPA 1968), *In re Dike* , 394 F.2d 584, 157 USPQ 581 (CCPA 1968), *In re Larson* , 340 F.2d 965, 144 USPQ 347 (CCPA 1965), and *In re Clark* , 214 F.2d 148, 102 USPQ 241 (CCPA 1954). The U.S. Court of Appeals Federal Circuit has also previously endorsed that interpretation. *In re Morris* 44 USPQ2d 1023 (CA FC 1997), *Advanced Cardiovascular Sys. v. Scimed Life Sys.* , 887 F.2d 1070, 1074, 12 USPQ2d 1539, 1542 (Fed. Cir. 1989) (nothing of record limited "integral" to mean "of one-piece" construction).

In description of Murphy it is considered that any object directly connected to the base can be considered integrally formed. Therefore, additional holders such as the hook (69) and roll support (43) are considered attached to the base.

The caddy is considered fixedly attached to the container in the sense that during normal operation such as pushing, inserting or removing implements, or tilting to empty, the caddy will not disengage from the container.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4-5,11 rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy. Claims 4 and 5 included a handle in a fixed position relative to the base. As Applicant has stated in paragraph [004] of the disclosure "... Workers often push the containers by their rims,...". Thus by virtue of having a rim which is capable of being grasped, the container has a handle. Furthermore, Webster's II dictionary defines a handle as: *1. A part that is held or controlled with the hand*

Likewise, the base (12) of Murphy has a rim; which, as understood from the disclosure of Applicant, is a handle.

Claim 11 includes means for holders on the top surface of the base. As Applicant has stated in paragraph [004] of the disclosure "...workers often prefer to... hang necessary tools... around the rim of the container." As mentioned above the rim has multiple uses as described by Applicant. Thus by virtue of having a rim from which items can be held, the container has a holder. Furthermore, Webster's II dictionary defines hold (holder) as: *1. the act or means of holding*

Likewise, the rim (16) of Murphy, as understood from the disclosure of Applicant, is a holder on the top surface.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in view of Park (6,405,881). Murphy teaches a caddy for organizing cleaning tools around the rim of a conventional waste container. Murphy does not disclose tabs for securing the caddy to the container. Park teaches a holder featuring a rim (24) and lower container (50) where they are secured together by a plurality of tabs(44). Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify the design of Murphy to include tab securing means as disclosed by Park. The motivation would be to provide a more secure attachment than the simple slip fit disclosed by Murphy.

10. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy. Murphy teaches a caddy for organizing cleaning tools around the rim of a conventional waste container. Murphy does not teach configuring a flat surface so that the container may be stabilized in the horizontal position or a handle opposite therefrom. It can be seen from the design of Murphy, basket (47) features a flat front surface (50). It can be seen from this configuration that were the container positioned horizontally on the surface (50) rolling would be sufficiently prevented. Also, as the handle extends around the perimeter of the rim it would be opposite the surface depending upon where the user gripped. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to use the flat surface

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provided by Murphy to stabilize the container. The motivation would be to prevent rolling.

Also, it can be seen that by having the basket position substantially below the top of the container and projecting outward, the container would rest horizontally at angle slightly less than 90 degrees.

11. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in view of Brubaker (199,507). Murphy teaches a caddy for organizing cleaning tools around the rim of a conventional waste container. Murphy does not teach a retainer hoop made of two semi-circular hoops for holding a bag within the base. Brubaker teaches a means for holding a bag using two semicircular hoops (C,D). Although, Brubaker does not teach using this bag holder in combination with a container it is well known in the art that hoop type holders can be effectively used with a container by pressing the hoop against the inner lip of a container. See e.g. U.S. patents 4,869,518; 2,421,740; 4,953,740; 5,269,435.

Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify the design of Murphy to include hoops to retain the bag. The motivation would be to allow removal of the bag without necessitating removal of the caddy.

12. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in view of Windle (6,123,215). Murphy teaches a caddy for organizing cleaning

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tools around the rim of a conventional waste container. Murphy teaches a bag dispenser fixed to the caddy but does not teach tapered members formed on the side of the base. Windle teaches a waste receptacle (24) with a bag dispenser (60) having tapered edges (col. 2 ln. 60-61) formed on the side of the receptacle. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify the design of Murphy to include the bag dispenser as described by Windle. The motivation would be to provide convenient access to and separation of bags.

Claim Rejections - 35 USC § 102

13. Claims 23-24 rejected under 35 U.S.C. 102(b) as being anticipated by Murphy.

The apparatus of Murphy is intended to be utilized according to the following method:

- m. Providing a waste container (see title)
- n. Providing a caddy (named cleaning organizer)
- o. Attaching the caddy to the waste container (col. 1 ln. 50-51)
- p. Inserting a janitorial implement into the caddy (col. 1 ln. 46)
- q. Fitting inner lip over entire circumference of container rim (figs. 2-3)

Claim Rejections - 35 USC § 103

14. Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in view of Park. Murphy teaches a method of organizing janitorial implements on a waste container by means of a caddy. Murphy does not teach a method of latching the caddy onto the waste container. Park teaches a method where a rim can

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be fix to a container using tabs. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify the method presented by Murphy to include latching the caddy onto the container as demonstrated by Park. The motivation would be to provide a more secure means of holding the caddy and container together.

15. Claims 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in view of Stanley (3,09,478). Murphy teaches a method of organizing janitorial implements on a waste container by means of a caddy. Murphy does not teach a method of holding an implement by means of a friction fit. Murphy discloses a bottle holder (47) but does not disclose a means of securing various size bottle in the holder. Stanley teaches a bottle holder utilizing a friction fit, to secure various size bottles (col.1 ln. 38-39). Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify the method presented by Murphy to incorporate a friction fit means as presented by Stanley. The motivation would be to provide a more secure means of holding of various sized objects placed into the holder.

16. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in view of Breveglierij et. al. (4,869,518). Murphy teaches a method of organizing janitorial implements on a waste container by means of a caddy. Murphy does not teach a hoop for retaining a bag within the caddy. Breveglierij teaches a janitorial cart featuring two hoop designed to hold a bag within the inner lip of a rim. Accordingly, it

would have been obvious to one with ordinary skill in the art at the time of the invention to modify the method presented by Murphy to include a bag retaining method as demonstrated by Breveglierij. The motivation would be to enable a user to remove the liner without removing the caddy.

17. Claim 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in view of Windle. Murphy teaches a method of organizing janitorial implements on a waste container by means of a caddy. Murphy does not teach a method of storing bags on guide recess formed into the caddy. Windle teaches a method where container liners can be accessed from a storage recess formed into the container. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify the method presented by Murphy to include means for retrieving container liners from a recess formed into the caddy, and separating container liners by use of tapered edges of the recess. The motivation would be to provide convenient access to multiple liners.

18. Claims 31-32,34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et. al. (D327,350). Brown teaches a utility cart featuring a waste container (seen as large open central space). A caddy (see as everything not directly contacting the interior open space). A flat outer edge portion (seen as front edge). Means for holding a plurality of janitorial implements (seen as holes within handle). The caddy is permanently attached to the container by means of being of unitary construction. It can be inferred from the design of Brown, as it contains a rearward stabilizing element

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(bottom protrusion), but no forward stabilizing element, that the cart was intended to be unloaded by forward tilting. Brown does not teach a waste liner. The examiner takes official notice that using liners in combinations with waste receptacles is well known in the art. Accordingly, it would have been obvious to one with ordinary skill in the art to use the cart as shown by Brown by tilting and dragging the liner outward. The motivation being that the liner would be difficult to lift out.

Claim Rejections - 35 USC § 102

19. Claims 1,33 are rejected under 35 U.S.C. 102(b) as being anticipated by Windle.

Windle teaches a container featuring:

- r. A caddy having a base (122) and a top surface (30)
- s. An open inner portion (28)
- t. An inner lip portion (26)

It can be seen from figure 6 that all components are integrally formed. It is not necessary to remove the caddy from container to empty container contents.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Dooley whose telephone number is 571-2721679. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James C Dooley
Examiner
Art Unit 3634


Richard Chilcot
Supervisory Patent Examiner
Technology Center